IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	
	)	
ROBERT McMILLEN and	)	Bankruptcy Case No. 02-32754
MARTHA McMILLEN,	)	
	)	
Debtors.	)	
_____	)	
	)	
TAMMY BERNEL and	)	
RAMON BERNEL,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Adversary Case No. 02-3257
	)	
ROBERT McMILLEN and	)	
MARTHA McMILLEN,	)	
	)	
Defendants.	)	

OPINION

This matter having come before the Court for trial on a Complaint Objecting to the Discharge of Debtors; the Court, having heard arguments of counsel and sworn testimony of the Plaintiffs and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

The Plaintiffs in this matter seek to have a default judgment, entered in the Circuit Court for the Third Judicial Circuit, Madison County, Illinois, on June 22, 2000, declared as a non-dischargeable debt pursuant to 11 U.S.C. § 523(a)(6). In Case No. 99-CH-299, the State Court entered a judgment in the total amount of $10,500, based upon the Debtors/Defendants violation of the Rental Property Utility

Service Act, pursuant to 765 ILCS 735/2-1, in the amount of $4,500. The State Court additionally entered a judgment against the Debtors/Defendants in the amount of $1,000 representing damages for severe and extreme emotional distress, with a further order for punitive damages against the Debtors/Defendants in the amount of $5,000. The basis for the State Court judgment arose out of actions taken by the Debtors/Defendants toward the Plaintiffs during May 1999, in connection with an apartment which the Plaintiffs rented from the Debtors/Defendants.

At trial, on May 3, 2003, the Debtors/Defendants failed to appear, even though the record of the instant adversary proceeding reflects that the Debtors/Defendants received proper notice of the date, time, and place for the scheduled trial. The Plaintiffs testified that the facts alleged in their First Amended Complaint for Injunctive Relief and Damages filed in the State Court proceeding on August 6, 1999, were true, and that those same factual allegations formed the basis of the Complaint Objecting to the Discharge of Debtors filed with this Court. The Plaintiffs further testified that the affirmative defenses raised in the Debtors/Defendants' Answer to Complaint Objecting to the Discharge of Debtors filed on November 27, 2002, were false.

The Plaintiffs have the burden of proof by a preponderance of the evidence to show that the debt in question is non-dischargeable under 11 U.S.C. § 523(a)(6). Grogan v. Garner, 498 U.S. 279, 111 S.Ct. 654 (1991). In the case of Kauaahau v. Geiger, 523 U.S. 57, 118 S.Ct. 974 (1998), the U. S. Supreme Court addressed a split among the Circuit Courts regarding the proper interpretation of the term "willful" under § 523(a)(6). The Supreme Court found that debts caused by negligent reckless conduct are dischargeable; whereas, debts arising from intentional torts are not dischargeable. In reaching this holding, the Supreme Court noted: "Intentional torts generally require that the actor intend the consequences of an

act, not simply the act itself." While the Supreme Court addressed the definition of the term "willful," it did not define the intent necessary to constitute willful conduct under 11 U.S.C. § 523(a)(6). Courts of this Circuit addressing the issue of the intent necessary to constitute willful conduct have found that where a plaintiff demonstrated by a preponderance of the evidence either that the debtor/defendant desired to cause the injury complained of, or that the debtor/defendant believed that harmful consequences were substantially certain to result from the debtor's acts willful conduct as required under § 523(a)(6) resulted. See: In re Marcotte, Adv. Case No. 01-9070, Bankr. C.D. Ill. (2002); and further In re Cox, 243 B.R. 713 (Bankr. N.D. Ill. 2000). The Cox Court reiterated the long standing definition of "malicious injury" as being one under which the debtor acts with a conscious disregard of one's duties or acts without just cause or excuse. See: In re Thirtyacre, 36 F.3d 697 (7th Cir. 1994). The Cox Court further went on to state that maliciousness does not require ill will or specific intent to do harm. In re Arlington, 192 B.R. 494 (Bankr. N.D. Ill. 1996).

In the instant case, under the uncontroverted facts as stated in both the Plaintiffs' First Amended Complaint for Injunctive Relief and Damages filed in the State Court proceeding on August 6, 1999, and in the Plaintiffs' Complaint Objecting to the Discharge of Debtors filed with this Court, it is clear that the debt arising from the default judgment entered in the State Court proceeding on June 22, 2000, is non-dischargeable pursuant to 11 U.S.C. § 523(a)(6). The actions taken by the Debtors/Defendants against the Plaintiffs were willful and malicious in all regards and were clearly done with the intent to harm the Plaintiffs and/or the property of the Plaintiffs. As such, it is the finding of this Court that the debt in the amount of $10,500 should be declared non-dischargeable in the Debtors/Defendants' Chapter 7 bankruptcy proceeding.

ENTERED: March 5, 2003.

/s/ Gerald D. Fines
United States Bankruptcy Judge